IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.219 of 2001

Judgment reserved on:17.04.2007.

Decided on: April 20, 2007

Gopal Thakur & Anr. **…..Appellants.**

VERSUS

Urmila Mahant & Ors. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellants: **Mr.Sunil M. Goel, Advocate.**

For Respondents No.1 to 5: **Mr.N.K.Sood with Mr.Aman Sood, Advocates.**

For Respondent No.6: **Mr.K.D.Sood with Mr.Sanjeev Sood, Advocates.**

Kuldip Singh, Judge.

This appeal has been filed against the award dated 25th May, 2001 passed by learned Motor Accident Claims Tribunal, Kullu in Claim Petition No.3/2000 whereby the learned Tribunal has awarded Rs.10,80,000/- to the claimants on account of death of Prem Singh in an accident along with interest at the rate of 9% per annum from the date of petition till the date of payment. The parties in this judgment are referred in the same manner as referred in the impugned award. The award amount has been ordered to be paid by respondents No.1 and 2 jointly and severally.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

2. The relevant facts of the case in brief are that Prem Singh husband of petitioner No.1 and father of petitioners No.2 to 4 and son of petitioner No.5 was hit by Scooter at Dhalpur Chowk, Kullu on 29th November, 1999. The petitioners filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') claiming compensation of Rs.28 lacs on account of death of Prem Singh. It is the case of the petitioners that respondent No.1 Gopal Thakur was driving the Scooter at the relevant time. The accident has taken place due to rash and negligent driving of Gopal Thakur. The respondent No.2 - Liladhar Thakur is the owner of the Scooter and respondent No.3 New India Assurance Company is the insurer of the Scooter.

3. The deceased Prem Singh was employed as Horticulture Development Officer, Kullu Block. On 29th November, 1999 when Prem Singh had virtually crossed the road the Scooter with no number plate but bearing Engine No.398059 Chasis No.CIMF 393953 came from Bus Stand side in a high speed and negligent manner. The Scooter was being driven by respondent No.1 and it struck against Prem Singh causing head injury. Prem Singh was taken to District Hospital, Kullu where he died on 30th November, 1999. The deceased at the time of death was getting Rs.15,881/- salary and he was also additionally earning Rs.3000/- from agriculture. The petitioners were totally dependant upon his income. On these facts, the claim petition was filed.

4. The respondent No.1 driver filed reply and admitted the accident but denied that he was driving the Scooter rashly and negligently. According to him, the deceased died due to his own negligence. The deceased was in haste to catch a bus, he started running across the road and in that process he struck with the middle portion of the body of the Scooter. According to him, the petitioners did not suffer any financial loss. The compensation claimed is excessive.

5. The respondent No.2 - Liladhar Thakur, owner of the Scooter, filed separate reply and denied negligence of the driver for causing the accident. He more or less took the same stand as has been taken by the driver.

6. The respondent No.3 Insurance Company filed reply and denied that the accident took place due to rash and negligent driving of the driver. It has also been denied that deceased died due to the injury suffered in the accident. The petitioners are not the legal representatives of the deceased and the compensation claimed is highly excessive. The insurer is not liable to pay any compensation even if petitioners are found entitled to any compensation because the driver of the Scooter had no valid driving licence at the time of accident and the Scooter was being plied without registration certificate.

7. The learned Tribunal held that the accident has taken place due to rash and negligent driving of the driver of the Scooter at

the relevant time and has awarded an amount of Rs.10,80,000/- to the petitioners as compensation on account of death of Prem Singh along with interest at the rate of 9% per annum from the date of filing of the petition till the date of payment. The amount of the compensation is to be paid jointly and severally by respondents No.1 and 2. The petition against respondent No.3 was dismissed.

8. I have heard the learned counsel for the parties and have also gone through the record.

9. The learned counsel for the appellants has assailed the finding recorded by learned Tribunal exonerating the Insurance Company. He has submitted that it has been proved on record that at the time of accident the Scooter driver was having learner's licence. The accident has taken place during the validity of learner's licence period. The driver was competent and authorized to drive the Scooter. The learned Tribunal has misconstrued Section 3 of the Act and Rule 3 of the Central Motor Vehicles Rules, 1989. The accident has taken place during the validity of Insurance Policy. There is no violation of Insurance Policy and the liability, if any, is of Insurance Company inasmuch as the Scooter was insured vide Ext.RA. The learned counsel for appellants has not seriously challenged the findings of learned Tribunal on the points of negligence of Scooter driver and quantum of compensation awarded.

10. The learned counsel for Insurance Company has supported the impugned award and has submitted that the Scooter

was being driven at the relevant time in violation of Section 3 of the Act and Rule 3 of the Central Motor Vehicles Rules, 1989 and Insurance Policy. Therefore, the Insurance Company is not liable to pay any amount on account of death of Prem Singh to the petitioners.

11. Learned counsel for the petitioners submitted that amount awarded to the petitioners is less and keeping in view the proved income of the deceased the petitioners are entitled to enhancement of the compensation.

12. The parties are not in dispute that at the time of accident the Scooter was insured with respondent No.3 and respondent No.1 - driver was having the learner's licence which was issued in his favour on 23rd July, 1999 and was valid up to 23rd January, 2000. This fact has otherwise been proved by RW-2 Duni Chand Licence Clerk Motor Licensing Authority, Kullu. The accident had taken place on 29th November, 1999 and on that date the respondent No.1 who was driving the Scooter was having valid learner's licence.

13. The simple case of the petitioners is that on 29th November, 1999 Prem Singh was hit by the Scooter which was being driven rashly and negligently by respondent No.1 and as a result of injuries sustained in the accident Prem Singh had died. In order to escape the liability, it was for the Insurance Company to plead and prove violation of the Insurance Policy. The Insurance Company in its reply has simply taken the plea that at the time of accident, the Scooter driver was not having valid driving licence. It is not the case

of the Insurance Company that any other person having valid driving licence was not sitting on the Scooter and instructing the driver at the time of accident. In evidence also the Insurance Company has not proved this fact nor put this defence to the witnesses of the petitioners during cross examination. The only case put forth by the Insurance Company in the pleading and in the evidence is that the Scooter driver at the relevant time was not having valid driving licence and he was simply having learner's licence. It cannot be said that at the time of accident respondent No.1 was not competent and authorized to drive the Scooter because of the fact that he was simply having learner's licence. The competency and authority of the person having learner's licence to drive a vehicle is no more *res integra* in view of decision of the Apex Court in ***National Insurance Co. Ltd. vs. Swaran Singh & Ors., (2004) 3 SCC 297.*** In this case, the Supreme Court has held as under:-

> "93. The Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14.] A learner's licence is, thus also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not

entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.

AND

94. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3(2) and 6 of the Act provide for restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licences are granted under the Rules framed by the Central Government or the State Governments in exercise of their rule-making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the Rules framed thereunder. It is now a well settled principle of law that rules validly framed become part of the statute. Such

> rules are, therefore, required to be read as a part of the main enactment. It is also a well settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage."

The Supreme Court has further observed as follows:

> "110(viii). If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree."

In the present case, the respondent No.3 Insurance Company has failed to prove violation of Section 3 of the Act and Rule 3 of the Central Motor Vehicles Rules, 1989. Therefore, findings of learned Tribunal that Insurance Company is not liable to pay the compensation amount to petitioners on account of death of Prem Singh in the accident is set aside.

14. The learned counsel for the appellants has not seriously disputed the findings of the learned Tribunal on the point of negligence of the Scooter driver and the quantum awarded by learned Tribunal. The petitioners have also not filed any appeal or cross objections against the impugned award. The learned counsel for the petitioners has otherwise failed to make out any case for enhancement of award amount as awarded by learned Tribunal. The learned Tribunal has

otherwise correctly appreciated the facts and has come to the right conclusion that the accident has taken place due to rash and negligent driving of the Scooter driver and the compensation awarded to the claimants is just and in accordance with the proved income on record of the deceased.

15. Thus, it is clear that respondent No.3 - Insurance Company, along with respondent No.1 - driver and respondent No.2 - owner of the Scooter, are jointly and severally liable to pay the compensation to the petitioners on account of death of Prem Singh in the accident involving Scooter Engine No.398059 Chasis No.CIMF 393953 which was insured with the Insurance Company at the time of accident.

16. No other point was urged.

17. For the reasons stated above, this appeal is partly allowed and the award dated 25th May, 2001 passed by the Motor Accident Claims Tribunal, Kullu in Claim petition No.3/2000 is modified. The petitioners are held entitled to a sum of Rs.10,80,000/- compensation to be paid by respondents No.1 to 3 jointly and severally on account of death of Prem Singh due to the injuries sustained by him in the accident on 29th November, 1999 involving Scooter Engine No.398059 Chasis No.393953 along with interest at the rate of 9% per annum from the date of filing of the petition till the payment. Out of the amount of compensation a sum of Rs.5 lacs is ordered to be paid to petitioner No.1 – widow, Rs.1,50,000/- each to

petitioners No.2 to 4 and Rs.1,30,000/- to petitioner No.5, along with interest as awarded. The parties are left to bear their own costs.

(Kuldip Singh)
Judge.

April 20, 2007
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